

REMARKS

Claims 1-2 and 5-21 are currently pending in the application. Only claims 1 and 15 are in independent form.

Claims 1 and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Barnett patent. Reconsideration of the rejection under 35 U.S.C. §102(b), as anticipated by the Barnett patent, as applied to the claims is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102, it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989), it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action states that the Barnett patent discloses the recited hose assembly comprising a tubular first layer containing therein multiple compartment means for carrying fluids therethrough, wherein the use of the tube for conveying fluids in an automobile is considered merely an intended use. However, when read more specifically, the Barnett patent only discloses the use of a polymeric material. There is no disclosure for the use of polymeric fluorocarbon as recited in the presently pending independent claims. A polymeric fluorocarbon is required for a fuel hose assembly. The use of the hose assembly in a fuel system, as recited in the presently pending independent claims, requires that certain materials be used to form the hose assembly. It would not be obvious to use a polymeric fluorocarbon in the plastic conduit of the Barnett patent, because the conduit of the Barnett patent does not require the characteristics of the polymeric fluorocarbon material such as

for example, the ability to bend without kinking subsequent to formation. The Barnett patent instead discloses forming the hose assembly of a material that can only be bent prior to being cooled. This is not an acceptable characteristic for a hose assembly for use in a fuel system, because fuel systems are installed subsequent to the creation of the hose assembly. In other words, the hose assembly is manually installed into a vehicle and bent at locations that require bending. There must therefore be some ability to bend the hose assembly after the hose assembly has been formed. Such capability is not allowable using the materials of the Barnett patent. Since the Barnett patent does not disclose the polymeric fluorocarbon material of the presently pending independent claims, the claims are patentable over the Barnett patent and reconsideration of the rejection is respectfully requested.

Claims 1 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Martucci patent in view of the Barnett patent. Reconsideration of the rejection under 35 U.S.C. §103(a), as being unpatentable over the Martucci patent, as applied to the claims is respectfully requested.

It is Hornbook Law that before two or more references may be combined to negative patentability of a claimed invention, at least one of the references must teach or suggest the benefits to be obtained by the combination. This statement of law was first set forth in the landmark case of Ex parte McCullom, 204 O.G. 1346; 1914 C.D. 70. This decision was rendered by Assistant Commissioner Newton upon appeal from the Examiner-in-Chief and dealt with the matter of combination of references. Since then many courts have over the years affirmed this doctrine.

The applicable law was more recently restated by the Court of Appeals for the Federal Circuit in the case of ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929 (Fed. Cir. 1984). In this case the Court stated, on page 933, as follows:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103 teachings of references can be combined only if there is some suggestion or incentive to do so. The prior art of record fails to provide any such suggestion or incentive. Accordingly we hold that the court below erred as a matter of law in concluding that the claimed invention would have been obvious to one of ordinary skill in the art under section 103."

This Doctrine was even more recently reaffirmed by the CAFC in Ashland Oil, Inc. v. Delta Resins and Refractories, Inc., et al., 776 F.2d 281,297, 227 U.S.P.Q. 657,667. As stated, the District Court concluded:

"Obviousness, however, cannot be established by combining the teachings of the prior art to produce the claimed invention unless there was some teaching, suggestion, or incentive in this prior art which would have made such a combination appropriate."

The Court cited ACS Hospital Systems, Inc. in support of its ruling. This Doctrine was reaffirmed in In re Deuel, 34 USPQ2d 1210 (Fed. Cir. 1995).

The Office Action states that the Martucci patent discloses the recited hose for use in an automobile comprising forming the first layer of a fluorocarbon. The Office Action concludes that the Martucci patent discloses all of the recited structure with the exception of providing a plurality of compartments in the first layer. It is respectfully submitted that the use of a fluorocarbon as the inner liner of a hose assembly for a fuel system is known to those of skill in the art. However, the compartmentalization of such a hose assembly is not known to those of skill in the art, and in fact, is counter-intuitive. A primary problem with hose assemblies in the fuel system is that multiple fluids need to be transported to the same place. Presently pending independent claims overcomes this problem by enabling the polymeric fluorocarbon hose assembly to include compartments therein. This is a substantial benefit over the prior art systems, which only enabled one type of fluid to flow therethrough. There is no disclosure in the prior art of the Martucci patent for

the need for or how to accomplish such compartmentalization in a fuel hose assembly.

The Office Action states that the Barnett patent teaches various numbers of passageways can be provided in a first layer of a tube and it would be obvious to one of skill in the art to modify the first layer of the Martucci patent by providing multiple compartments as suggested by Barnett. However, in order for such an anticipation rejection to be appropriate, there must be some suggestion in either the Martucci or Barnett patents for the combination of these two features. There is absolutely no suggestion in either patent for such a combination. Further, one of skill in a fuel hose art would not look to plastic hoses to overcome any problems associated with fuel hose assemblies. This is because fuel hoses have specific requirements with regard to permeation and such requirements are not satisfied by the plastic hose assembly disclosed in the Barnett patent. There would therefore be no inclination to a person of skill in the fuel hose art to look to the plastic hose art to overcome any problems. Therefore, since neither the Martucci nor the Barnett patent alone, or in combination, disclose the hose assembly of the presently pending independent claims, the claims are patentable over the cited prior art and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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